THE POWERS OF THE INTERSTATE COMMERCE COMMISSION.

BY MILTON H. SMITH, PRESIDENT OF THE LOUISVILLE & NASHVILLE RAILROAD.

IN an article in the NORTH AMERICAN REVIEW for November, Mr. Charles A. Prouty, of the Interstate Commerce Commission, presents an ingenious argument in favor of certain demands which the Commission has assiduously pressed upon Congress for the last year or two.

Mr. Prouty strives to show that the rate-making power desired by the Commission is not a rate-making power; but he admits that the power "certainly is great." The best way to ascertain just what this power is, is to take the precise language of the Cullom Bill, which represents exactly what the Interstate Commerce Commission proposes. After providing for a hearing, this proposed amendment reads as follows:

"If the Commission is of the opinion that the rates, fares, or charges, as filed and published, or the classification, or the privileges, facilities and regulations published in connection therewith are unreasonable or otherwise in violation of law, it shall determine what are and will be reasonable and otherwise lawful rates, fares, charges, classification, privileges, facilities or regulations, *and shall prescribe the same, and shall order the carrier or carriers to file and publish, on or before a certain day, to take effect on a certain day, schedules in accordance with the decision of the Commission.* . . .

"A rate, fare, or charge established by the order of the Commission shall not be increased, nor shall a classification, privilege, facility or regulation so established be departed from, without the consent of the Commission, granted upon application of the carrier after due notice and upon full hearing."

This language certainly speaks for itself and leaves nothing to implication. Mr. Prouty argues upon the assumption that the Commission can take action only upon a sworn complaint, but

the act permits the Commission to originate these proceedings without any complaint whatever. The Commission may thus proceed on its own motion and bring before it in one proceeding as many carriers as it may choose, and change as many rates, fares, charges, classifications, privileges, facilities and regulations as it may wish, and prescribe the same, and order the carriers to file and publish on or before a certain day, to take effect on a certain day, schedules in accordance with the decision of the Commission. This is tremendous power, and there is no ground for believing that it would be sparingly or cautiously exercised, for, in the Cincinnati and Chicago Freight Bureau cases, the Commission made orders directly affecting about thirty carriers, requiring very material changes in rates on several thousand commodities from Chicago and Cincinnati to eight important commercial centres in the Southern States, thereby radically changing the entire rate situation as to all south-bound traffic in the territory between the Atlantic and Mississippi, and even further West.

Under the most drastic State Commission laws, the Commissions are authorized to make schedules of charges and reasonable rates of transportation. If the Interstate Commerce Act is amended, as desired by the Commission, that Commission will have precisely the same power. The carrier will have to file all of its interstate rates with the Commission; the Commission will inspect those rates; if it believes them reasonable it will not change them; otherwise it will. A hearing and an investigation are provided for, but that does not affect the power. The most sovereign State Commission is presumed to act only upon investigation, and would not refuse to give the carrier a hearing. Under the plan of the Interstate Commerce Commission, its orders can go into effect without any resort to any judicial tribunal for their enforcement, and the rates made by the most thorough-going rate-making State Commission can have no greater effect than that. Under the Federal Constitution, the rates made by the most powerful Commission, or even by the Legislatures themselves, are susceptible of review if they are confiscatory in character, and under the powers of review proposed by the Interstate Commerce Commission it seems quite clear that the railroads can expect no relief from the courts upon a review of the rates made by the Commission, unless they show substantially that the rates are confiscatory in character. In its Eleventh Annual Report, the Commission

admits that the right of review which it proposed "would not probably embarrass the practical operation of the law;" in other words, it would not embarrass the Commission in the extensive rate-making in which it will engage if this power is conferred upon it.

Railroad commissions can be of but two sorts: First, those which are designed to enforce the law, by instituting prosecutions and by assisting complainants against the railways both in the courts and out; and, second, those which, in fact, are empowered to take charge of the traffic departments of the railroads and make rates for them. No one can read the debates in Congress without being convinced that the Interstate Commerce Commission was intended to be simply of the first-named class. The proposition now is to change the Commission entirely by putting it into the second class, and to constitute it thereby the virtual traffic manager of all the railways in the United States.

The amendments sought by the Commission involve a radical change in the policy of the law. The purpose of the present Interstate Commerce Act was summed up by the Select Committee of the Senate in its report submitted with the bill, which, with some modifications, was finally enacted, as follows:

"The provisions of the bill are based upon the theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations, both by declaring them unlawful and adding to the remedies now available for securing redress and enforcing punishment, and also by requiring the greatest practicable degree of publicity as to the rates, financial operations and methods of management of the carriers."

In speaking of discriminations between persons similarly situated, the Committee said :

"This is the most flagrant and reprehensible form of arbitrary discrimination. Individual favoritism is the greatest evil chargeable agains the management of the transportation system of the United States."

Traffic evils are of three kinds: First, discrimination between individuals at the same locality; second, discriminations between different localities; third, excessive rates. The Interstate Commerce Act was evidently designed to correct the first and second classes of these evils, and especially the first class. The third class of evils could hardly have been said to exist as an independent class. Rates in general were extremely low when the Interstate Com-

merce Act was passed. If any particular rates were too high they were out of line with the general adjustment, and, therefore, constituted unjust discriminations. The Commission now proposes to reverse the plan of the Act, and to make of paramount importance the correction of excessive rates, an object which was considered of very slight moment at the time of the passage of the act, and which is still less important now.

Congress prohibited charging more for a short haul than for a long haul under substantially similar circumstances and conditions, but gave the Commission power to afford relief from the operation of the law in special cases. Even that qualifying power of relief was strenuously resisted in Congress, as giving too much power to the Commission. But now the Commission proposes to repeal the long and short haul law, and enact in its stead a provision that the Commission may, when it thinks proper, order carriers not to charge more for short than for long hauls; in other words, instead of a qualified power of relief from the long and short haul law, the Commission is to be allowed to make long and short haul laws at will, varying such laws in different sections to suit its views.

The same idea of completely reversing the whole policy of the act is exhibited in many other respects, and especially in the proposed change in the method of procedure, whereby the Commission's orders are to be made self-executing.

Such far-reaching powers ought never to be granted without grave necessity, and there is, in fact, no necessity for granting them. They are not needed to correct the only real evil of the traffic situation at present, which is discrimination between individuals in the same locality.

The only branch of the powers demanded which would affect unjust discriminations between localities is the power to prescribe a minimum rate. But this power is not needed, and it would be an extremely dangerous power to confer upon the Commission. Whenever railroads, either separately or through any joint arrangements, so adjust their rates as to discriminate against one place upon their lines in favor of another, the law as it is affords ample opportunity for correcting that discrimination. This is illustrated by the recent decision of Judge Severens in the Chattanooga case, wherein the court decreed the enforcement of an order of the Commission prohibiting what the Commission

considered to be an unjust discrimination against Chattanooga and in favor of Nashville. The case has been appealed, indeed; but it proves that, whenever an unjust discrimination in fact exists, the courts will correct it by enforcing the orders of the Interstate Commerce Commission. The trouble up to this time has been that the Commission has persisted in treating as unjust discriminations perfectly proper and just discriminations, resulting from the necessary recognition by carriers of unavoidable and controlling competition, and the courts have almost without exception in such cases held that the discriminations were not unjust, and, therefore, they have declined to enforce the orders of the Commission.

The class of cases to which the Commission intends especially to apply the power to prescribe minimum rates, is illustrated by a case stated in the Commission's last annual report. Eau Claire, Winona and La Crosse are rival lumber markets, on navigable streams down which the logs are brought from the forests. Eau Claire is considerably nearer the forests, and, therefore, gets its logs more cheaply than Winona and La Crosse. Certain railroads, which do not reach Eau Claire, extend westward from Winona and La Crosse. In order to develop the lumber trade at the two latter places, these railroads so reduced their rates on lumber as to compensate Winona and La Crosse for the disadvantage of their location, and to enable them to compete with Eau Claire. The Commission pronounced this principle of rate adjustment as radically unsound, and insists that Eau Claire must be given the benefit of its natural advantages. Consequently, if the Commission had the power to establish minimum rates, it would proceed to compel the railroads from Winona and La Crosse to increase their rates on lumber from those places, so that they would no longer be able to compete with Eau Claire. The inevitable tendency of this would be to centralize the lumber trade of that region at Eau Claire. That this is a most dangerous power is obvious, and the effect of its exercise would be to interfere with one of the most salutary forms of competition existing in this country, which tends to keep down rates, and to prevent the centralization of industry in a few places enjoying exceptional natural advantages.

Mr. Prouty points out that the rate on petroleum from Chicago to New Orleans is lower than the rate on linseed oil, while the

rate on petroleum from Cleveland to New Orleans is higher than the rate on linseed oil, and intimates that the Commission wants this power so as to raise the rate on petroleum from Chicago to New Orleans, to the end that Cleveland may be put on the same footing. The law, as it stands at present, affords ample opportunity to remedy any injury which may result in any quarter from any improper adjustment of the rates referred to; it prohibits any undue or unreasonable preference or advantage to any particular description of traffic or the subjecting of any particular description of traffic to any undue or unreasonable prejudice or disadvantage. Therefore, if the rate on petroleum from Chicago to New Orleans ought to be no lower than the rate on linseed oil and other articles of the same class from Chicago to New Orleans, the Commission can readily correct that inequality. On the other hand, if the rate on petroleum from Cleveland to New Orleans ought to be no higher than the rate on linseed oil and other similar commodities from Cleveland to New Orleans, then the Commission can correct that inequality. If, however, the Chicago-New Orleans railroads give Chicago a favorable rate, and do not thereby discriminate against any other place on their lines, or any other description of traffic, it would be an unwarranted interference for the Commission to increase that rate (with the result of a proportionate increase in the rate from other points on the same line to New Orleans), simply because some other railroad in some other part of the country charges a higher rate on the same commodity.

But are the powers asked by the Commission needed to prevent excessive rates ? It will be admitted that no radical and dangerous innovations should be made to correct an evil unless it is a serious evil. The fact is, however, that the evil of excessive rates in this country, considered in and of themselves, is not only not serious, but it has practically no existence whatever. Rates in general here are on an extremely low basis, and, if any rates are too high, they are out of line with the general rate adjustment, and, therefore, can be speedily corrected as unjust discriminations. Almost without exception, complaints as to rates are based on the idea, not that they are unjust and unreasonable in and of themselves, but that they are too high as compared with other rates on the same road. In a hearing before the Senate Committee on Interstate Commerce, on March 18, 1898, Mr.

Martin H. Knapp, Chairman of the Interstate Commerce Commission, stated that "the question of excessive rates, that is to say, railroad charges which in and of themselves are extortionate, is pretty nearly an obsolete question." It would certainly be an act of folly to revolutionize the Interstate Commerce Commission, and change it from a useful auxiliary tribunal into an institution with almost unlimited power over the railroads and over the commerce of the country, in order to remedy something which the Chairman of that Commission admits is practically obsolete.

Of course, it is possible to pick out particular instances of complaints as to excessive rates, but those complaints involve also the idea of an unjust discrimination between localities, and if there is really any foundation for them, they are susceptible of correction on that basis. The very complaint selected by Mr. Prouty as an illustration, the one as to grain rates from Sioux City to Chicago, charges that the rates in question are unjust discriminations in favor of other localities, and in favor of other descriptions of traffic; being so, they can be corrected under the law as it stands. Moreover, the mere possibility of such complaints, or even occasional instances, cannot be any excuse for a radical innovation in the Interstate Commerce Act. Such instances existed when the Interstate Commerce Act was passed certainly to as great an extent as now, but that fact was not deemed sufficient to justify making the machinery for their correction the great central feature of the law.

Mr. Prouty himself emphasizes the fact that if excessive rates exist they amount to unjust discriminations; for he says that while many rates are too low, others are too high, and that one individual is making good the loss incurred by the railway in the service of some other individual. Such a case is a clear case of unjust discrimination or undue preference, and the present law affords ample opportunity for its correction. Mr. Prouty, however, falls into the very peculiar error of supposing that railways engage in transportation to or from competitive points at an actual loss. Railways never engage in transportation which they know, or have reasonable ground to believe, entails loss. It is true they frequently transport competitive traffic at very much less than non-competitive traffic, but this is done simply on the ground that the railway has to be maintained, in any event, for the transportation of the non-competitive traffic; so that the ex-

pense will be virtually the same whether the competitive traffic is hauled or not, and, therefore, any earnings from competitive traffic will be so much additional help toward paying the expenses which must be incurred in any case. The competition which the railway cannot control merely compels the carriage of the competitive traffic to be done at the low rate, or not at all.

Mr. Prouty points out that some court has held that the published rate is presumptively a reasonable rate, and that the shipper cannot maintain an action to recover any part of that rate which he has paid, and hence he deduces the conclusion that as the law stands to-day there is absolutely no remedy for the exaction of an unreasonable freight charge. Theoretically, a right of action has always existed at common law in all the States of this Union to recover such portion of the carrier's rate as was in excess of a just and reasonable compensation for the service, and in none of those States has it been held that a recovery is precluded by the fact that the rate charged was duly published; yet, in all the reports of all the courts of this country, there can be found hardly a case seeking to enforce that common law right.

In answer to the argument that the power is a tremendous one, and, therefore, should not be vested in any tribunal, Mr. Prouty inquiries: "Shall a wrong be unrighted because it is a great wrong? When an individual or an industry or a locality finds itself in the tightening coils of a railway corporation, shall there be no relief?" The point is, however, that the wrong which alone this great rate-making power could be intended to correct, instead of being a great wrong, is, as a practical matter, no wrong at all, because excessive rates in and of themselves are practically obsolete at this day. If an individual, or an industry, or a locality should be so unfortunate as to find himself or itself in the tightening coils of a railway corporation, the present law affords ample relief for that distressing situation. Mr. Prouty seems to be under the impression that it is the business of railway companies to strangle industrial activity; in other words, that railways, whose very existence depends upon industrial prosperity, are constantly engaged in the suicidal act of destroying that prosperity.

The railroad system of transportation in the territory roughly described as south of the Ohio and Potomac, and east of the Mississippi rivers, may be said to have been created, so far as interstate traffic is concerned, since the close of the Civil War. It is

a territory surrounded and penetrated by water transportation lines. The difficulties in adjusting the rates of transportation, under the conditions that have existed, have been exceedingly great. Much time and labor have been devoted to the securing of a proper adjustment, with, it is believed, reasonable success. Manufacturing has been developed, and with great rapidity, during the last twelve or fifteen years. Manufactories of cotton fabrics are increasing rapidly and in successful operation. The production of coal and iron, also, has been largely increased. The manufacture of steel, on a large scale, is about to be inaugurated. That development could not have been secured if the Interstate Commerce Commission during all that period had enjoyed the position, which it now seeks to obtain, of Traffic Manager and Commercial Arbiter, and had acted on the principles which it has persistently tried to force on the carriers of that section.

It is pertinent to inquire whether the Interstate Commerce Commission, charged as it already is with multifarious duties, will be able to grasp all the countless details pertaining to the infinite variety of traffic passing over 180,000 miles of railroad in the United States.

In this connection, the oft-quoted opinion of the Commission, delivered soon after its formation by its then Chairman, Judge Cooley, in discussing the impracticability of determining in advance when railroads should and should not charge more for a short than for a long haul, becomes interesting:

"The Commission would, in effect, be required to act as rate-maker for all the roads, and compelled to adjust the tariffs so as to meet the exigencies of business, while at the same time endeavoring to protect the relative rights and equities of rival carriers and rival localities. This in any considerable State would be an enormous task. In a country so large as ours, and with so vast a mileage of roads, it would be superhuman. A construction of the statute which should require its performance would render the due administration of the law altogether impracticable; and that fact tends strongly to show that such a construction could not have been intended."

It is contended by Mr. Prouty that, in the popular apprehension, the Commission always possessed the power which it now demands. Although the Commission's demands have already resulted in widespread discussion in the journals of the day, and will undoubtedly create prolonged and interesting debates in Congress, one may read from one end to the other of the long debates upon the subject of the regulation of interstate commerce preceding the enactment of the Interstate Commerce Law, and find

scarcely a reference to this rate-making power which the Commission now insists it was always understood to have. The debates on the subject in the 48th and 49th Congresses cover over 2,000 pages. The portion of the debates reasonably relating to the subject of rate-making could all be put within the limits of 30 pages, and the scattering references to the subject in the debates show that, almost without exception, all the Senators and Representatives who referred to that point understood that the bill conferred no rate-making powers. Congress had no thought of conferring upon the Commission the power to fix rates, and no bill conferring that power could have been passed.

The Select Committee of the Senate declared the fixing of rates by legislation to be impracticable, and added:

"Those who have asked the adoption of this plan of regulation have suggested the establishing of rates by a commission; but it is questionable whether a commission or any similar body of men could successfully perform a work of such magnitude, involving, as it would, infinite labor and investigation, exact knowledge as to thousands of details, and the adjustment of a vast variety of conflicting interests."

The Commission, in 1887, declined in a certain case to fix rates, saying:

"It is, therefore, impossible to fix them in this case, even if the Commission had the power to make rates generally, which it has not. Its power, in respect to rates, is to determine whether those which the roads impose are, for any reason, in conflict with the statute."

Afterward, however, the Commission changed its mind, and, in the Chicago and Cincinnati Freight Bureau cases above referred to, it made an attempt "to make rates generally," and it now insists that it always claimed, and that practically everybody admitted, that it had the power which it sought to exercise in the latter cases.

In 1889, Judge Jackson declared that it was unnecessary to discuss the power of Congress over the subject of interstate rates, "because the existing law does not undertake to prescribe anything more upon the subject than that they shall be reasonable and just."

Mr. Prouty erroneously says that the carriers suggested no doubt as to the powers of the Commission in these respects for the first six years of its existence. In 1891, the Commission's right to make rates was distinctly challenged in an answer filed in court by the Lehigh Valley Railroad Co., setting up expressly as a defense that the Commission had no power to make rates.

In the latter part of 1892, or early in 1893, the right of the Commission to make rates was raised in a case in the United States Circuit Court in Georgia. The point was made in the same case when it got to the Supreme Court, and was decided against the Commission. There was not, therefore, the prolonged and general acquiescence which the Commission would indicate in its assumption of power to make rates for the railroads.

Moreover, an acquiescence in a comparatively modest usurpation of authority can have no bearing when a much more glaring usurpation is made. Although at first the Commission's ventures in rate-making were what might be termed comparatively modest, the encroachment gradually but steadily increased. The Commission's first experiment in rate making was in 1887; the change of a single rate on a single commodity (the rate on wheat from Walla Walla, in Washington Territory, to Portland, Oregon), after an elaborate and painstaking investigation. It was a long step from this act to its act in 1891, when, admittedly without thorough investigation and upon the examination of a single witness, the Commission made a very material reduction in the rates on several hundred commodities from Cincinnati to Atlanta, and reduced those rates to a point even lower than that witness said was reasonable. The courts declined to enforce this ill-considered action of the Commission. It was still another long step to the Commission's action in 1894, whereby it made most material changes in rates on several thousands of commodities from Chicago and Cincinnati to eight important cities in four of the principal Southern States, thereby rendering imperative a complete readjustment in practically all the rates on south-bound traffic in all the territory east of, and in a portion of the territory west of, the Mississippi River. This action, likewise, the courts declined to enforce, holding that the Commission had no such power.

The mere fact, therefore, that the commerce of the country was not dried up nor its energies prostrated by the exercise of the rate-making power by the Commission during the first few years of its existence, is not, as Mr. Prouty seems to think, a guarantee that no evils will result from granting practically unlimited rate-making power to the Commission. From comparatively small beginnings, the Commission was just getting well started in indiscriminate rate-making when checked by the courts, and, consequently, serious evils were averted.

One of the powers now demanded, which is especially dangerous to the commerce of the country, is the power to prescribe minimum rates so as to carry out the Commission's views as to the comparative commercial and industrial advantages which places ought to enjoy. This plan of constituting the Commission the arbiter of commerce, so that it can decide what cities in this country are entitled to advantage over other cities, and enforce those decisions by increasing the rates to the cities now having the lowest rates, is something new.

Another power, which even now the Commission does not claim it ever had, or was ever thought to have, and which would be a complete revolution in the system devised by Congress, is the power to render decrees which can take effect without any resort to the courts. Mr. Prouty refrains from emphasizing this demand, although it has been as vigorously assailed as any other.

The Interstate Commerce act clearly shows that it was not intended to give to the Commission any independent power whatever. It was evidently designed as a tribunal to assist in the enforcement of the law, by conducting investigations and rendering findings which would constitute a *prima facie* case, upon which findings the complainant could go into court, or the Interstate Commerce Commission itself for the complainant could go into court, and seek the enforcement of the law.

The Select Committee of the Senate, in its report above referred to, said of the Commission:

"It is designed and believed to be a valuable auxiliary agency in facilitating and securing the enforcement of whatever regulations may be prescribed by Congress. . . . Unless the commission itself be constituted a court, which the Committee does not consider expedient, the final determination of all contested proceedings instituted under any laws that may be passed by Congress must rest with the courts of the United States."

The debates in Congress show that the Commission's advocates thus understood its functions.

In 1889 the United States Circuit Court, through Judge Jackson, said :

"Without reviewing in detail the provisions of the law, we are clearly of the opinion that the Commission is vested with only administrative powers of supervision and investigation, which fall far short of making the board a court, or its action judicial in the proper sense of the term. The Commission hears, investigates and reports upon complaints made before them involving violations of or omissions of duty under the act; but subsequent judicial proceedings are contemplated and provided for, as the remedy for the enforcement, either by itself or the party interested, of its order or re-

port in all cases where the party complained of or against whom its decision is rendered does not yield voluntary obedience thereto."

So, in this respect also, an absolute reversal of the system is now proposed. Instead of continuing as an auxiliary to the law and the courts, without any independent powers, the plan is to make the Commission the great central feature of traffic regulation, with vast original powers. The Commission is to make its orders, prescribing maximum and minimum rates, classifications, and so forth, and all those orders are to take effect without any resort to any judicial tribunal for their consideration and enforcement. The only qualification is that the carrier may within thirty days take the matter into court for relief; but even then, unless the court can say, upon an inspection of the record, that it plainly appears that the order proceeds upon some error of law, or is unjust or unreasonable on the facts, it cannot suspend the operation of the order pending the review. If the court wants further light on the facts, it can only obtain it by sending the case back to the Commission for further investigation. The power of review will likely prove to be of a very restricted character. The question, What is a reasonable rate ? is essentially a question of fact, depending on an infinite variety of details, from which different conclusions can be drawn. Since the Commission will be the tribunal set apart for the primary determination of these facts, the courts, upon well-settled principles, will be disinclined to overturn the findings of the Commission, unless they are palpably against the evidence, and in cases where the evidence is of such intangible character, it will be very difficult to convince the courts that the findings of the Commission are palpably against the evidence, and, therefore, the Commission's power will be practically unlimited, save by the constitutional limitation resting upon all railroad commissions, that their rates shall not be confiscatory in character.

It is especially inappropriate to allow the Commission to issue self-executing decrees, in view of the varied and incompatible functions which the Commission exercises. With such power given to its decrees, the Commission, with a jurisdiction extending over the entire area of this country, and with the unlimited power of interference in the most vital concerns, not only of the railroads, but of the commercial and industrial interests of the country, would have far greater powers than any court of original jur-

isdiction in this country, and it should, therefore, be as carefully constituted as any court. To exercise such powers, it should certainly be charged with no duties which would tend, even in the slightest degree, to impair the judicial temper of the tribunal. Yet the Commission supervises various details in railway operations and railway accounting. It has inquisitorial powers to detect violations of the law, and may cause prosecutions to be instituted to punish such violations. It may institute on its own motion, and in its own name, complaints before itself, and it may then proceed to hear and determine them. Thus, not only is the Commission in some respects a sort of railway superintendent and chief railway accountant, but it may in the same matter be detective, prosecutor, plaintiff and court. To ask that its determinations, made under such circumstances, shall take effect without the necessity of any resort to any really judicial tribunal for their enforcement, is nothing short of preposterous.

The conclusion is irresistibly forced upon the mind of any impartial student of the situation that the magnitude of the powers demanded cannot be exaggerated, that they are absolutely unwarranted, and that to grant them would give the Commission the most dangerous power of interference with the commerce of the country.

Mr. Prouty, in concluding his remarks, makes an unfair and misleading use of a portion of my testimony before the Commission. It is impracticable to set out in full all of the testimony bearing on the point in question. That testimony was delivered upon a hearing before the Commission on petitions by the railroads for extensions of time within which to comply with the provisions of the Act of March 2, 1893, requiring interstate carriers to equip their cars with automatic couplers and air brakes. Among the reasons in support of the Louisville & Nashville Railroad Company's petition, I had assigned the financial depression that had existed for several years, and also expressed apprehension as to future earnings on account of prospective legislation which might be detrimental. The Commission seized upon this as an opportunity to interrogate me at large upon the general traffic situation, and to elicit my views relative to giving the Commission the power to make rates. In response to these inquiries, I expressed the opinion that the people of the country and the carriers were getting along well, and could and did

adjust these matters to their mutual satisfaction. Commissioner Prouty submitted a supposed case of an unreasonable rate on the Louisville & Nashville Railroad. I insisted that there were no unreasonable rates on that road; that all of the rates were within the charter limits of the corporation and very much less, probably one-half, and in some instances not twenty-five per cent., of such charter rates, which the Legislature had fixed upon as reasonable and fair; that the fact that the rates were, perhaps, one-third of what they were originally, and one-tenth of what it would cost the shipper if he did not have the railroad, was evidence of the reasonableness of the rate, and it was necessarily to the interest of the company to keep rates reasonable, in order to retain and develop traffic. I admitted the propriety of the law prohibiting unjust discrimination, but reiterated that the rate-making power ought not to be invested in the Commission because, practically, there were no unreasonable rates, and that the mere possibility of the existence of an unreasonable rate was no reason for turning over to the Commission the making of rates for the railroads, unless governmental paternalism was to be extended over everybody for protection from possible injustice.

This very investigation emphasized in a striking way what seems to me to be the complete lack of judicial temper on the part of the Commission. The Commission was sitting for the purpose of discharging a highly important and responsible statutory duty relating to automatic couplers and air brakes; yet the minds of the Commission were so bent upon obtaining greater power, that they could not resist the temptation to branch off into a lengthy discussion on that topic, which had no possible relation to the subject upon which they were engaged. Four members of the Commission took part in this discussion, stating in the form of questions every argument which they could conceive to sustain the propriety of their demands. It may be doubted whether a tribunal, incapable under such circumstances of adhering to the serious work before it, and indulging instead in lengthy argument with a witness, on the policy of extensive legislation desired by the tribunal on an entirely different matter, can safely be made the repository of the almost unlimited powers which are now sought.

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